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SEC

SERVICE DATE - NOVEMBER 15, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42051

WISCONSIN POWER AND LIGHT COMPANY

v.

UNION PACIFIC RAILROAD COMPANY

Decided: November 14, 2000

This case involves a challenge by Wisconsin Power and Light Company (WPL) to the reasonableness of the rates assessed by Union Pacific Railroad Company (UP) for the transportation of unit trains of coal from the Powder River Basin of Wyoming to WPL's electric generating facility at Sheboygan, WI. The parties filed their opening evidence and argument on June 15, 2000, their reply presentations on August 14, 2000, and their rebuttals on September 28, 2000.

On October 16, 2000, UP filed a request for the simultaneous filing of closing briefs.<sup>1</sup> WPL replied in opposition on October 18, 2000. UP contends that a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to specifically address intervening changes in the opponent's position, set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute. UP notes that final briefs have been accepted in other recent rate complaint proceedings, citing FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022 (STB served July 2, 1999); CF Industries, Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served July 6, 1998); Potomac Electric Power Co. v. CSX Transportation, Inc., STB Docket No. 41989 (STB served Nov. 24, 1997); and Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, No. 41185 (STB served Mar. 15, 1996) (Arizona).

WPL argues in reply that closing briefs would be redundant and unnecessarily expensive and would result in further delay. But in complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record. WPL is also concerned that the filing of simultaneous briefs would effectively deprive it of the opportunity to have the last word on stand-alone costs, an issue on which WPL bears the burden of proof. WPL submits that only the filing of opening and reply briefs would avoid this result, and that the Board followed such a procedure in the Arizona

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<sup>1</sup> UP proposes the filing of briefs not to exceed 25 pages within 30 days.

case cited by UP. In Arizona, however, the parties were directed to file simultaneous opening and reply briefs. Thus, the briefing schedule in Arizona did not permit the complainant to have the last word, and in subsequent proceedings, a single round of simultaneous briefs has been deemed sufficient. This approach reflects the Board's consistent position that new evidence or argument is not permitted in briefs; rather, the parties are simply to summarize the evidence and direct the Board's attention to the issues they deem critical. As such, there should be nothing in the briefs that would invite a response. Indeed, the introduction of new material is subject to motions to strike and other sanctions.

Accordingly, by this order, UP's motion to permit the filing of briefs is granted, subject to the restriction against the introduction of new evidence. The briefs shall not exceed 25 pages. In addition, UP will be directed to point out where in the record (by document and page number and by Bates number) it shows how it developed the cycle times used to find the number of locomotives required by the stand-alone railroad.<sup>2</sup> Each party shall file 15 copies of its brief as well as 3 computer diskettes containing electronic versions of the submission in WordPerfect 9.0 format.

It is ordered:

1. Briefs not to exceed 25 pages in length are due December 15, 2000.
2. UP is ordered to provide the information on cycle times.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>2</sup> See Kent/Baranowski workpapers, pages CK/MB 0000050-54 in UP's Reply Evidence, Vol. 8 of 22.